



New South Wales

## SUPREME COURT RULES (AMENDMENT No. 325) 1998

1. These rules are made by the Rule Committee on 21 December 1998.
2. The Supreme Court Rules 1970 are amended as follows:
  - (a) Part 1 rule 8 (1)  
Insert in alphabetical order:  
“Professional Negligence List” means the list to which Part 14C applies.
  - (b) Part 7 rule 7  
After subrule (2) insert:  
(3) Subrule (1) is subject to Part 14C rule 7 (which relates to a claim for professional negligence).
  - (c) Before Part 15, insert:

### PART 14C—PROFESSIONAL NEGLIGENCE LIST

#### Definitions

1. In this Part:

**“expert”**, in relation to any question, means a person who has such knowledge or experience of, or in connection with, that question, or questions of the character of that question; that his or her opinion on that question would be admissible in evidence.

**“professional negligence”** means the breach of a duty of care or of a contractual obligation in the performance of professional work or in the provision of professional services by a medical practitioner, an allied health professional (eg dentist, chemist, physiotherapist), a hospital, a solicitor or a barrister.

**“professional negligence claim”** means a claim in the Common Law Division for damages, indemnity or contribution based on an assertion of professional negligence, whether made by statement of claim or by cross-claim.

**“the List”** means the Professional Negligence List kept in the registry.

### **Application of Part**

2. This Part does not apply to proceedings in the Equity Division or entered in the Construction List and is subject to Part 14A.

### **Entry in List**

3. (1) A party to proceedings:

- (a) in which a professional negligence claim is instituted after the commencement of this Part; or
- (b) which are entered in the List,

must add the words "Professional Negligence List" under the heading and title of all documents filed by that party.

(2) Where a document endorsed pursuant to subrule (1) (a) is filed, the proceedings (ie the whole of the proceedings as instituted by statement of claim and all cross-claims in the same proceedings) shall be entered in the List, if not already so entered.

(3) The Court may, on application by a party or of its own motion, order entry in the List of proceedings:

- (a) in which subrule (1) has not been complied with;
- (b) in which a professional negligence claim was instituted before commencement of this Part; or
- (c) which are or have been transferred to the Court and which include a professional negligence claim.

### **Removal from the List**

4. (1) The Court may, on application by a party or of its own motion, order that proceedings be removed from the List and may give such further directions as to the continuance of the proceedings as it thinks fit.

(2) Proceedings in the List that are entered in the Construction List shall be removed from the List.

(3) This Part does not apply to proceedings that have been removed from the List.

### **Notice of entry in or removal from the List**

5. (1) The Court shall give notice of entry of proceedings in, and removal of proceedings from, the List:

- (a) in the case of entry otherwise than pursuant to an order—to the party filing the document that results in the entry; and

(b) in any other case—~~each~~ party who has an address for service in the proceedings and who was not present or represented when the order to enter or remove was made.

(2) Notice under subrule (1) (a) may, in addition to any other valid means, be given to a party by handing it to the person who filed the document.

(3) A party who is given notice under subrule (1) (a) shall serve the notice with the document and, if the document is not a statement of claim, will forthwith serve the document and the notice on each other party who has an address for service in the proceedings.

#### **Service of experts' reports**

6. (1) A person instituting a professional negligence claim (other than a claim against a barrister or a solicitor) must, unless the Court otherwise orders, file and serve, with the statement of claim or cross-claim instituting the professional negligence claim, an expert's report or experts' reports which includes or include an opinion supporting:

- (a) breach of duty of care, or contractual obligation, alleged against each person sued for professional negligence;
- (b) the general nature and extent of damage alleged (including death, injury or other loss or harm and prognosis, as the case may require); and
- (c) the causal relationship alleged between such breach of duty or obligation and the damage alleged.

(2) Within 28 days from the date of an order being made under rule 3 (3), the party making the professional negligence claim (other than a claim against a barrister or a solicitor) must file and serve such a report or reports on all other parties to the proceedings.

(3) In the case of a professional negligence claim against a barrister or a solicitor, the Court may order the plaintiff or cross-claimant to file and serve an expert's report or experts' reports supporting the claim.

(4) If a party fails to comply with subrule (1), (2) or (3), the Court may by order, on the application of a party or of its own motion strike out the whole or any part of the proceedings (including a cross-claim), as may be appropriate.

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**Validity for service**

7. For the purposes of service, an originating process that contains a claim for professional negligence shall be valid for 4 months from the date on which it is filed, unless the Court otherwise orders.

(d) **SCHEDULE E Part 1**

After the matter relating to Part 14, insert in the appropriate column:

Part 14C	Enter proceedings in the Professional
Rule 3 (3)	Negligence List

3. The amendments contained in paragraph 2 shall commence on 1 April 1999.

**EXPLANATORY NOTE**

*(This note does not form part of the rules).*

1. The object of the amendments contained in paragraph 2 is to establish a special list for proceedings in the Common Law Division in which there is a claim for damages, indemnity or contribution based on an assertion of professional negligence against a medical practitioner, an allied health professional (e.g. dentist, chemist, physiotherapist), a hospital, a solicitor or a barrister. Proceedings in the Equity Division or entered in the Construction List will not be entered in the Professional Negligence List.

The amendments provide a mechanism for entry and removal from the List and for identifying Court documents as relating to proceedings in the List.

In proceedings in the List, copies of expert reports must be served on all parties by the person making the professional negligence claim at an early stage in the proceedings. This requirement is designed to eliminate delay and expense in assessing the claim. The period during which originating process that includes a professional negligence claim may be validly served is reduced from 12 months to 4 months, unless the Court otherwise orders.

The power is given to registrars to enter proceedings in the List.

Procedures will be adopted in respect of the List designed to reduce delay and expense and to ensure proceedings are fully prepared for hearing.

M. A. Blay, The Secretary of the Rule Committee